

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MERCALDE,

Plaintiff,

v.

COINSTAR INTERNATIONAL, INC., a
Delaware corporation; COINSTAR, INC., a
Delaware corporation; PDS TECHNICAL
SERVICES, INC., a.k.a., AVIANT/PDS, a
Washington corporation; VOLT TECHNICAL
RESOURCES, LLC, a Delaware corporation;
VOLT INFORMATION SERVICES, INC., a
New York corporation, FSI CORPORATION;
BRYAN AYRE, a resident of Washington;
DENNIS DAVIS, a resident of Washington;
JOHN DOE MANAGERS; and 2 JOHN ROE
CORPORATIONS AND PARTNERSHIPS,

Defendants.

NO. CV05-2023-JCC

STIPULATION AND PROTECTIVE
ORDER

STIPULATION

The parties hereby stipulate to the terms of the following Protective Order and agree that it may be entered by the Court without further notice of presentation to any party.

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3 /s Mary Ruth Mann, WSBA #9343

4 Mary Ruth Mann, WSBA #9343
5 Attorney for Plaintiff Michael Mercalde
6 Law Office of Mann & Kytile, LLC
7 615 Second Avenue, Suite 760
8 Seattle, WA 98104
9 Telephone: (206) 587-2700
10 Facsimile: (206) 587-0262
11 Email: mrmanm@mrmannlaw.com
12
13

/s Thomas E. Platt, WSBA # 5908

Thomas E. Platt, WSBA # 5908
Attorneys for Defendants CONSTAR
Perkins Coie, LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
Email: Tplatt@perkinscoie.com

14
15
16
17 /s Holly M. Hearn, WSBA #26795

18 Holly M. Hearn, WSBA #26795
19 Ann Pannoni, WSBA #31824
20 Attorneys for Defendant VOLT
21 Davis Wright Tremaine, LLP
22 1501 Fourth Avenue, Suite 2600
23 Seattle, WA 98101
24 Telephone: (206) 622-3150
25 Facsimile: (206) 628-7699
26 hollyhearn@dwt.com
27
28

/s Frederick Mendoza, WSBA #6021

Frederick Mendoza, WSBA #6021
Attorneys for PSI
Curran Mendoza, P.S.
555 West Smith Street
Kent, WA 98035
Telephone: (253) 852-2345
Facsimile: (253) 852-2030
Email: ffm@curranmendoza.com

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30
31
32 /s Anne Preston, WSBA #19033

33 Anne Preston, WSBA #19033
34 Attorneys for Defendant PDS
35 Garvey Schubert Barer
36 1191 Second Avenue, Eighteenth Floor
37 Seattle, WA 98101
38 Telephone: (206) 464-3939
39 Facsimile: (206) 464-0125
40 Email: Apreston@gsblaw.com
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PROTECTIVE ORDER

Pursuant to FRCP 26(c) and the foregoing stipulation of the parties, the Court hereby enters the following Protective Order.

1. Confidential matter

- a. As used herein, "Confidential Matter" shall mean any document, information, or thing furnished in the course of this litigation during discovery or otherwise, or specific portions thereof, that is designated by a party as "Confidential" pursuant to Section 2(b) below if:
 - i. it contains proprietary or commercially sensitive information that is held confidential by any party, including but not limited to, financial, technical, business, or organizational information;
 - ii. it is part of an individual's personnel file, equal employment opportunity complaint or investigation files, medical records, or it includes an individual's identifying information, such as name, address, or telephone number, that a party treats as confidential; or
 - iii. it describes, contains, or discloses internal corporate information that is held confidential within any of the Defendant companies and/or corporations or any of its parent or related companies.

The determination of whether produced materials fall into one of the above categories shall be made in the first instance in good faith by the party from whom discovery is sought. If there is disagreement between the parties as to whether particular produced materials have been properly designated as confidential, the dispute may be resolved by the Court only as provided for in this Order. Plaintiff's medical records are deemed confidential without need for further designation.

- b. The parties recognize that experience may disclose that further categories of documents, information, or things should also be treated as confidential. Entry of this Order does not foreclose agreements by the parties to keep such documents, information, or things confidential or application to the Court for protection of other documents, information, or things.

- 1 c. All documents, information, or things deemed Confidential Matter by a party
 2 shall be marked or stamped as "Confidential." Plaintiff's medical and
 3 psychological records are deemed Confidential without further designation or
 4 marking.
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 9 d. Any document, information, or thing not designated as "Confidential" shall not be
 10 covered by this Order, provided, however, that inadvertent production of any
 11 document, information, or thing not designated "Confidential" shall not by itself
 12 be deemed a waiver of confidentiality as to such matter, and a party thereafter
 13 may designate the same as "Confidential" promptly upon being advised or
 14 discovering the inadvertent disclosure. Disclosure by any party of such matter
 15 prior to notice of the confidential nature thereof shall not be deemed in violation
 16 of this Order.
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 25 e. Except as expressly provided for in this Order, Confidential Matter, and any
 26 information contained therein, shall not be communicated or disclosed in any
 27 manner, either directly or indirectly, to any person or entity, and shall be used
 28 only for the prosecution and/or defense of this litigation and for no other purpose.
 29 Notwithstanding the preceding, nothing in this Order shall in any way limit or
 30 preclude a party's use or disclosure of its own Confidential Matter as the party
 31 sees fit.
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39 2. Disclosure of Confidential Matter

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 41 Except as provided above, or pursuant to any subsequent court order, Confidential Matter
 42 shall not be disclosed to anyone except:
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 45 a. The attorney of record, other legal counsel of a party, such attorneys' employees
 46 and any copy or scanning service engaged by such attorneys.
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 48 b. Court personnel, mediators, and court reporters used in litigation. Nothing in this
 49 Order shall limit or prevent the use of any Confidential Matter in open court at
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hearings in, or during trial of, this action, provided, however, that such use shall not relieve the parties of their obligations under this Order including, without limitation, the obligation to file Confidential Matter under seal.

- c. Experts and consultants retained or called by a party to assist in preparation, settlement, trial, or appeal of this action.
- d. Persons whose depositions are noted or potential trial witnesses, as well as their counsel, only to the extent counsel for the disclosing party determines in good faith that it is reasonably necessary to do so. Prior to the disclosure of any Confidential Matter under this subparagraph, the person to whom the disclosure is made shall agree in writing, or on the record in the case of a deposition, to be bound by the terms of this Order by signing an agreement to be found in the form of Attachment A hereto.
- e. The parties to this action, including its/their officers, directors, and employees. Such parties may not use Confidential Matter (unless they are the designating party) for any purpose other than the prosecution, defense or settlement of this litigation, and except as otherwise provided herein, may not discuss the contents with any person other than the parties herein or counsel in this litigation.
- f. Confidential Matter may also be disclosed to any other person upon written consent by the designating party.

3. Use in Briefs, Exhibits, Testimony, and Other Documents

Confidential Matter used as exhibits to or incorporated in any other manner in briefs, memoranda, transcripts of testimony, or other documents filed with the Court shall be protected as follows:

- a. to the extent that any brief, memoranda, transcript of testimony or other document submitted to the Court incorporates or refers to the substance of any information contained in any Confidential Matter, such brief, memorandum, transcripts of

1 testimony or other document or portion thereof shall be filed under seal and
2 appropriately marked in accordance with local rules.
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5 b. Confidential Matter that is filed or part of the record shall be filed with the Court
6 under seal and appropriately marked in accordance with local rules.
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9 4. Use in Depositions

10 A party may designate sections or questions of a deposition confidential during a
11 deposition.
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15 5. Disposition of Confidential Matter

16 No later than sixty (60) days following the final conclusion of the proceeding, including,
17 without limitation, any appeal or retrial, all counsel and every person to whom Confidential
18 Matter has been disclosed shall return all Confidential Matter, and all materials which contain or
19 reflect Confidential Matter, including any copies, extracts or summaries thereof, and any
20 portions of depositions designated as confidential pursuant to this Order. As to those materials
21 which contain or reflect Confidential Matter, but which constitute counsels' work product,
22 counsel shall destroy such work product and all copies thereof.
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31 6. Confidentiality Challenge

32 Any party who objects to the designation of any documents or information as
33 Confidential Matter must meet and confer with the party who so designated the documents or
34 information in a good faith effort to resolve any differences. In the event the parties are unable
35 to resolve their differences regarding designation after a reasonable opportunity to meet and
36 confer, the party objecting to the designation may then move the court for a determination that
37 the document or information is not appropriately designated pursuant to the terms of this Order.
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45 7. Subsequent Production

46 If any person or entity serves on a party a subpoena duces tecum or other request for
47 production of Confidential Matter covered by this Order, that party shall immediately notify the
48 designating party of the request, and shall notify the person or entity serving such request that
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1 such materials are protected under this Order. Unless within ten (10) business days of receipt of
 2 such notification, the designating party applies for an order from the court of competent
 3 jurisdiction precluding the party upon who the subpoena or request is served from complying
 4 with the request, such party shall be free to produce the Confidential Matter if the subpoena or
 5 request otherwise complies with lawful requirements. If an order precluding compliance with
 6 the request is timely sought, the party upon whom the subpoena or request is served shall not
 7 produce the Confidential Matter until after the court rules on such application.
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 15 8. Termination

16 After the termination of this action, this Order shall continue to be binding upon the
 17 parties hereto, and all persons to whom Confidential Matter has been disclosed or
 18 communicated.
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 23 9. Modification

24 This Order may be modified in the event that the parties agree in writing to a
 25 modification of the provisions thereof, or such modification is ordered by this court. Nothing in
 26 this Order shall prevent any party to this action from seeking modification of this Order for good
 27 cause shown, or to compel production of any document not otherwise subject to discovery.
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 33 10. Remedies

34 The parties expressly acknowledge and agree that all remedies under Civil Rule 37 will
 35 be available to the Court, in its discretion, to sanction any violation of this Order.
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 39 11. Scope of Protective Order

40 Nothing in this Order restricts a party from using or disclosing its own Confidential
 41 Matter for any purpose. The parties may apply for other protective orders not covered by this
 42 Order.
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 47 12. Retention of Jurisdiction

48 The parties and any other person subject to the terms of this Protective Order agree that
 49 this Court has and retains jurisdiction during and after this action is terminated for the purpose of
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enforcing this Order.

13. Compliance with Order

The parties agree that strict compliance with this Order is essential to achieving the Order's purpose of facilitating legitimate discovery while protecting and preserving the privacy and confidentiality of properly designated documents and information.

IT IS SO ORDERED this 2nd day of March, 2006.



UNITED STATES DISTRICT JUDGE

Presented by:

/s Mary Ruth Mann, WSBA #9343
Mary Ruth Mann, WSBA #9343
Attorney for Plaintiff Michael Mercalde
Law Office of Mann & Kytile, LLC
615 Second Avenue, Suite 760
Seattle, WA 98104
Telephone: (206) 587-2700
Facsimile: (206) 587-0262
Email: mrmann@mrmannlaw.com

/s Thomas E. Platt, WSBA # 5908
Thomas E. Platt, WSBA # 5908
Attorneys for Defendants COINSTAR
Perkins Coie, LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
Email: Tplatt@perkinscoie.com

/s Holly M. Hearn, WSBA #26795
Holly M. Hearn, WSBA #26795
Ann Panonni, WSBA #31824
Attorneys for Defendants VOLT
Davis Wright Tremaine, LLP
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101
Telephone: (206) 622-3150
Facsimile: (206) 628-7699
hollyhearn@dwt.com

/s Frederick Mendoza, WSBA #6021
Frederick Mendoza, WSBA #6021
Attorneys for Defendant FSI
Curran Mendoza, P.S.
555 West Smith Street
Kent, WA 98035
Telephone: (253) 852-2345
Facsimile: (253) 852-2030
Email: ffm@curranmendoza.com

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4
5 /s Anne Preston, WSBA #19033

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8 Garvey Schubert Barer

9 1191 Second Avenue, Eighteenth Floor

10 Seattle, WA 98101

11 Telephone: (206) 464-3939

12 Facsimile: (206) 464-0125

13 Email: Apreston@gsblaw.com
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EXHIBIT A

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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MICHAEL MERCALDE,

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COINSTAR INTERNATIONAL, INC., a
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Delaware corporation; PDS TECHNICAL
SERVICES, INC., a.k.a., AVIANT/PDS, a
Washington corporation; VOLT TECHNICAL
RESOURCES, LLC, a Delaware corporation;
VOLT INFORMATION SERVICES, INC., a
New York corporation, FSI CORPORATION;
BRYAN AYRE, a resident of Washington;
DENNIS DAVIS, a resident of Washington;
JOHN DOE MANAGERS; and 2 JOHN ROE
CORPORATIONS AND PARTNERSHIPS,

Defendants.

NO. CV05-2023-JCC

UNDERTAKING

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation of job description is _____.
4. I have received a copy of the Protective Order in this case and have carefully read
and understand its provisions. I will comply with all of its provisions, including
holding in confidence and not disclosing to anyone not qualified under the

1 Protective Order, any documents or other information designated "Confidential"
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3 or any words, summaries, abstracts, or indices of designated information, and
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5 copies thereof, which come into my possession, and documents or things which I
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7 may prepare relating thereto.
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9 5. I hereby consent to be subject to personal jurisdiction of this Court in respect to
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11 any proceeding relating to the enforcement of the Protective Order.
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13 DATED this _____ day of _____, 2006.
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18 Signature
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